No. 86-6169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

WILLIAM WAYNE THOMPSON,
Petitioner

v.

STATE OF OKLAHOMA,
Respondent.

On Writ of Certiorari to the Court of Criminal Appeals of the State of Oklahoma

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JOINT APPENDIX

HARRY F. TEPKER, JR.*
College of Law
University of Oklahoma
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Norman, Oklahoma 73019
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Counsel for Petitioner

ROBERT H. HENRY
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PETITION FOR CERTIORARI FILED DECEMBER 22, 1986
CERTIORARI GRANTED FEBRUARY 23, 1987

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CHRONOLOGY

1983

Feb. 18: Information and arrest warrant filed.

Feb. 22: Petition for Delinquency and Accountability (District Court of Grady County, Case No. JFJ-83-12).

Apr. 22: Court decides to hold Thompson accountable as if he was an adult. Certification Order (District Court of Grady County, Case No. JFJ-83-12).

Apr. 22: First Amended Information filed (R. 31).

Apr. 23: First appearance for Thompson; Bond denied.

June 9: Thompson bound over for trial (R. 43-44).

June 20: Counsel for Thompson files Petition In Error appealing the District Court order that certified Thompson to stand trial as if he was an adult (Case No. J-83-362).

July 8: Thompson is arraigned; pleads not guilty. Trial date is set for Sept. 19, 1983. (R. 63-64).

July 15: Bill of Particulars In Rem Punishment is filed (R. 88).

July 15: Attorney McConnell files motion to withdraw as counsel for Thompson (R. 90).

Aug. 9: Attorney McConnell's motion to withdraw is overruled. (R. 100).

Sept. 14: Motion for severance granted (R. 130).

Sept. 23: Co-defendant Glass is found guilty of first degree murder; sentenced to death (R. 253).

Dec. 5-Dec. 9: Trial of William Wayne Thompson

Dec. 8: Thompson found guilty of first degree murder (R. 349)

Dec. 9: Jury fixes punishment at death (R. 367).

1983

Dec. 16: Co-defendant Jones is found guilty of first-degree murder; sentenced to death (R. 432, 447)

1984

Jan. 6: Thompson is sentenced; Death warrant issued (R. 478, 479 et. seq.).

Jan. 6: Notice of Intent to Appeal (R. 494-96).

Jan. 10: Judgment and Sentence on Conviction filed, District Court of Grady County, January 10, 1984 (No. CRF-83-45) (R. 512).

Jan. 10: Appointment of Oklahoma Appellate Public Defender (R. 509)

Jan. 13: District Court's certification allowing Thompson to stand trial as if he was an adult is affirmed by order of the Oklahoma Court of Criminal Appeals. (Case No. J-83-362) (R. 510-11)

Jan. 13: Order of Court of Criminal Appeals of Oklahoma staying execution of Wayne Thompson (R. 538).

Mar. 1: Co-defendant Mann is found guilty and is sentenced to death (R. 610, 624).

1986

Aug. 29: Opinion of the Court of Criminal Appeals of Oklahoma affirming judgment and sentence (No. F-84-29).

Sept. 24: Rehearing denied.

Dec. 22: Petition for Writ of Certiorari docketed.

1987

Feb. 23: Petition for Writ of Certiorari granted.

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

No. JFJ-83-12

IN THE MATTER OF WILLIAM WAYNE THOMPSON,
A MALE CHILD UNDER EIGHTEEN YEARS OF AGE

PETITION FOR DELINQUENCY AND ACCOUNTABILITY

Comes now Tony R. Burns, District Attorney for Grady County, State of Oklahoma, and alleges:

That the above named William Wayne Thompson, residing at 320 Illinois Ave., Chickasha, Oklahoma, is a child 15 years of age, within purview of the Juvenile Division of the District Court, and is a delinquent child for the following reason, to-wit:

That said Juvenile did on or about the 23rd day of January, 1983, in Grady County, Oklahoma, unlawfully, wrongfully, willfully commit the crime of Murder In The First Degree in the manner and form as follows: That said Juvenile did, with malice aforethought and with a premeditated design to effect death, without authority of law, effect the death of Charles Keene by beating him with his boots or shoes, shooting him with a firearm and by slashing his throat and body with a sharp instrument, then and there inflicting mortal wounds in the body of Charles Keene from which mortal wounds Charles Keene did languish and die on the 23rd day of January, 1983, contrary to the Statute in such cases made and provided and against the peace and dignity of the state.

That the parents of said child are father, J. B. Thompson, Sr., 320 Illinois Ave., Chickasha, Oklahoma; his mother, Dorothy Thompson, 320 Illinois Ave., Chickasha, Oklahoma.

WHEREFORE, Petitioner prays that summons to be issued and that this matter be set for hearing according to law. That at said hearing the Court find that the alleged said child is guilty, and that said child is delinquent because of his aforesaid act. That the Court further find that said child is competent and had the mental capacity to know and appreciate the wrongfulness of his said act at the time committed. That said child be found accountable and be held for preliminary hearing and trial for said alleged criminal act.

Filed: February 22, 1983.

TONY R. BURNS
District Attorney

By: /s/ [Illegible]
Assistant District Attorney

(Affidavit Omitted in Printing)

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

(Title Omitted in Printing)

CERTIFICATION ORDER

On March 29, 1983, the Court heard the testimony of 5 witnesses and received 7 exhibits into evidence, and found (1) that the crime of Murder in The First Degree had occured and (2) probable cause to believe that the respondent William Wayne Thompson committed said crime.

On April 21, 1983, the Court heard the testimony of 9 witnesses and received 7 additional exhibits into evidence. After considering the testimony of the witnesses at both hearings and a careful examination of the exhibits the Court further found substantial evidence that:

(1) This was a very serious offense to the community which resulted in the death of an individual. The offense was committed in an aggressive, violent, premeditated and willful manner as shown by the wounds and injuries to the body of Charles Keene (two gunshot wounds, slashed throat and belly, broken leg and head injuries) and the manner in which the body was concealed (chained to a concrete block and placed in a river) and the instrumentalities used to effect his death (a gun and knife or knives).

10 O.S. § 1112 B 1

(2) The offense was committed against a person which resulted in the death of that person from injuries which were, beyond any doubt, intentionally inflicted.

10 O.S. § 1112 B 2

(3) Although the respondent does not have as high an I.Q. or as great an intelligence as other individuals, there is no evidence from any witness or in either psychological report (State's exhibit ——, Respondent's Exhibit 3) that he is retarded or suffers from any organic or psychotic illness. The testimony of Dr. Klein, the lay witnesses and the psychological reports show unquestionably that he knows right from wrong and understands the consequences of his actions and that he just doesn't care. The evidence also shows that the respondent is street wise and that he has the sophistication and maturity necessary to understand and appreciate the wrongful nature of his actions.

10 O.S. § 1112 B 3

(4) The respondent has a long and very antisocial history of previous contacts with law enforcement authorities (7 arrests before this homicide and 2 after). Four of these arrests have been for offenses against a person (2 assault and batteries, 2 assault and batteries with a knife). One of the assault and batteries occurred *after* the date of this homicide. The respondent has previously received counseling by the Youth Services organization and by the Court Related and Community Services division of the Department of Human Services. The respondent has previously been placed in an institution outside of the community (The boys Ranch, Edmond, Okla.). The respondent has previously been adjudicated a delinquent child and placed on formal probation.

10 O.S. § 1112 B 4

(5) The prospects for adequate protection of the public are low if the respondent is merely adjudicated a delinquent child and placed in the custody of the Department of Human Services. This is at least the fourth of five incidents of aggressive behavior, with the behavior becoming increasingly violent and dangerous. Neither counseling nor institutionalization have had any positive affect on this juvenile. The witnesses from the Department of Human Services could offer no possible placement within the Department with any services that hold out any reasonable prospect for rehabilitation of this juvenile. The best the Department could do for this juvenile would be to warehouse him until he was 18. Furthermore, from the testimony of the psychologist, Dr. Klein, and the respondent's counsellor, Mary Robinson, as well as from the testimony of the lay witnesses, the Court finds substantial and persuasive evidence that this juvenile is not amenable to any rehabilitation efforts as long as he remains in the juvenile justice system.

10 O.S. § 1112 B 5

(6) This offense did not occur while the juvenile was escaping or in an escaped status from an institution for delinquent children. However, it is interesting to note that while this juvenile was institutionalized in the Boy's Ranch in Edmond, Oklahoma, he received a special home leave (Christmas) and refused to return.

Based upon a careful consideration of the statutory guidelines provided in 10 O.S. § 1112, other cases wherein the Court of Criminal Appeals has provided rules for the District Courts to follow in certification hearings, *Matter of Sanders* Okla. Cr. 564 p.2 273 (1977), *Matter of R.P.R.G.* Okla. Cr. 584 p.2 239 (1978), *Matter of G.D.C.* Okla. Cr. 581 p.2 908 (1918), and *Sherfield v State* Okla.

Cr. 511 p.2 598 (1978), and the testimony of the 14 witnesses and 14 exhibits at the two hearings held in this case, the Court finds that there are virtually no *reasonable* prospects for rehabilitation of William Wayne Thompson within the juvenile system and that William Wayne Thompson should be held accountable for his acts as if he were an adult and should be certified to stand trial as an adult. Done this 21st day of April, 1983.

/s/ Oteka L. Alford
OTEKA L. ALFORD
Associate District Judge

IN THE DISTRICT COURT
IN AND FOR GRADY COUNTY
STATE OF OKLAHOMA

(Title Omitted in Printing)

FIRST AMENDED INFORMATION

STATE OF OKLAHOMA, COUNTY OF GRADY, ss:

I, the undersigned District Attorney of said county, in the name, by the authority, and on behalf of the State of Oklahoma, give information that on about the 23rd day of January A.D., 1983 in said County of Grady and State of Oklahoma, one BOBBY JOE GLASS, ANTHONY JAMES MANN, RICHARD JONES AND WILLIAM WAYNE THOMPSON did then and there unlawfully, wrongfully, willfully commit the crime of MURDER IN THE FIRST DEGREE in the manner and form as follows:

> That said Defendant did, with malice aforethought and with a premeditated design to effect death, while acting together jointly in concert, each with the other, without authority of law, effect the death of Charles Keene by beating him with their boots and shoes, shooting him with a firearm and by slashing his throat and body with a sharp instrument, then and there inflicting mortal wounds in the body of Charles Keene from which mortal wounds Charles Keene did languish and die on the 23rd day of January, 1983;

contrary to the form and statute in such cases made and provided and against the peace and dignity of the state.

TONY R. BURNS
District Attorney

By: /s/ [Illegible]
Assistant District Attorney

STATE OF OKLAHOMA, COUNTY OF GRADY, ss:

I do hereby solemnly swear that I have read the above and foregoing information, know the content thereof, and that the statements therein contained are true:

/s/ [Illegible]

Subscribed and sworn to before me this 22nd day of April, 1983.

/s/ [Illegible]
GLENDA FENIMORE
Court Clerk

WITNESSES FOR THE STATE OF OKLAHOMA:

Terry Cunningham, Sheriff's Office, Chickasha, Okla;
Robert Lee, OSBI, Lawton, Okla;
Jack Daley, OSBI, Lawton, Okla;
John Greg, OSBI, Lawton, Okla;
Ken Reed, Chickasha P.D., Chickasha, Okla;
Dany Sterling, Chickasha P.D., Chickasha, Okla;
Fred Jordan, Medical Examiner, Box 26901,
Oklahoma City, Okla;
Jerry Peters, OSBI, Oklahoma City, Okla;
Mary Long, OSBI, Oklahoma City, Okla;
James Looney, OSBI, Oklahoma City, Okla;
Ann Reid, OSBI, Oklahoma City, Okla;
Randy Jackson, Sheriff's Office, Chickasha, Okla;
Royce Whybark, Sheriff's Office, Chickasha, Okla;
Dr. Crowell, Grady Memorial Hospital, Chickasha, Okla;
Donetta Bradford, 304 South 18th, Frederick, Okla;
Malcolm Brown, Chickasha, Okla;
Lucille Brown, Chickasha, Okla;
Dorothy Thompson, 320 Illinois, Chickasha, Okla;
Charlotte Mann, 929 North 12, Chickasha, Okla;
Charlesetta Garcia, 412 North 4th, Chickasha, Okla;

Vickie Keene, Box 139, Amber, Okla;
Charles Camp, 1510 Missouri, Chickasha, Okla;
Marcia Camp, 1510 Missouri, Chickasha, Okla;
Jerry Freitag, 3225 California, Chickasha, Okla;
Gary Beggs, 3229 California, Chickasha, Okla;
Tommy Kirk, 315 North 1st, Chickasha, Okla;
Rusty Featherstone, OSBI, Oklahoma City, Okla;
Bennie McCathey, 412 North 4th, Chickasha, Okla;
Danny Mann, Rt. 2, Rt. 2, Box 120, Ninnekah, Okla;
Gordon L. McCarthy, 412 North 4th, Chickasha, Okla;
Al Cheek, Sheriff Office, McIntosh County, Eufaula, Okla;
Jim Nixon, Eufaula, Okla;
Ron Taylor, Sheirff, Grady County, Chickasha, Okla;
Harvey Pratt, OSBI, Oklahoma City, Okla;
Jim Smith, Town Oak Apartments, Chickasha, Okla;
Jim Madison, Federal Correctional Center, El Reno, Okla;
Ohal Brand, Route 2, Ninnekah, Okla;
Elton L. Crick, El Reno P.D., El Reno, Okla;
Helen Lkein, 2500 South McGee, Norman, Okla;
David Reed, Otasco, Chickasha, Okla;
Stacey Knight, Chickasha, Okla;
Bill Day, Chief of Police, Eufaula, Oklahoma

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

(Title Omitted in Printing)

BILL OF PARTICULARS
IN REM PUNISHMENT

I, the undersigned District Attorney of the Sixth District Grady County, State of Oklahoma, do upon my official oath further give the said Court to know and be informed that the offense of Murder In The First Degree as charged within the original information, was committed by the said William Wayne Thompson, named therein and should be punished by death, due to and as a result of the following aggravating circumstances, to-wit:

1. The murder was especially heinous, atrocious or cruel;

2. The existence of a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society.

/s/ Tony R. Burns
TONY R. BURNS
District Attorney

[Certificate of Service Omitted in Printing]

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

SELECTED JURY INSTRUCTIONS: December 8, 1983

No. 17

Should you find from the evidence, under the Instructions and beyond a reasonable doubt that the defendant is guilty of MURDER IN THE FIRST DEGREE as charged in the Information and as defined in these Instructions, then you should find the defendant guilty as charged. But if you do not so find or should you entertain a reasonable doubt thereof, then in either of said latter events, you should find the defendant not guilty.

You are further instructed that the statutes of the State of Oklahoma provide that a person who is convicted of MURDER IN THE FIRST DEGREE shall be punished by death or by imprisonment for life.

At this stage of the trial, insofar as the charge of MURDER IN THE FIRST DEGREE is concerned, you shall limit your deliberation to whether you find the defendant guilty or not guilty. The question of punishment, if any, for MURDER IN THE FIRST DEGREE is not before you at this time. If you find the defendant guilty of MURDER IN THE FIRST DEGREE, there will be a subsequent sentencing proceeding for you the jury to determine whether the defendant should be sentenced to death or life imprisonment.

No. 18

The Court has made rulings in the conduct of the trial and the admission of evidence. In so doing, I have not expressed nor intimated in any way the weight or credit to be given any evidence or testimony admitted during the trial, nor have I indicated in any way the conclusions to be reached by you in this case.

It is your responsibility to determine the credibility of each witness and the weight to be given the testimony of each witness. In determining such weight or credibility, you may properly consider: the interest, if any, which the witness may have in the result of the trial; the relation of the witness to the parties, the bias or prejudice of the witness, if any has been apparent; the candor, fairness, intelligence, and demeanor of the witness; the ability of the witness to remember and relate past occurrences, the means of observation, and the opportunity of knowing the matters about which the witness has testified. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, aided by the knowledge which you each possess in common with other persons, you will reach your conclusions. You should not let sympathy, sentiment, or prejudice enter into your deliberations, but should discharge your duties as jurors impartially, conscientiously, and faithfully under your oaths and return such verdict as the evidence warrants when measured by these Instructions.

From time to time during this trial, the attorneys have made objections that I have ruled on. You should not speculate upon the reasons why objections were made. If I approved or sustained an objection, you should not speculate on what might have been said or what might have occurred had the objection not been sustained by me.

After you have retired to consider your verdict, select one of your number as foreman and enter upon your deliberations. When you have agreed on a verdict, your

foreman alone will sign it, and you will, as a body, return it in open court. Your verdict must be unanimous. Forms of verdict will be furnished. You will now listen to the argument of counsel which is a proper part of this trial.

Given this 8th day of December 1983.

/s/ James R. Winchester
JAMES R. WINCHESTER
Associate District Judge

SUPPLEMENTAL INSTRUCTION

No. 19

You have asked the question Has the Defendant been certified as an adult.

ANSWER: Yes.

/s/ James R. Winchester
JAMES R. WINCHESTER

SENTENCING PROCEEDING: JURY INSTRUCTIONS.
December 8, 1983

No. 1

The defendant in this case has been found guilty by you, the jury, of the offense of MURDER IN THE FIRST DEGREE. It is now your duty to determine the penalty to be imposed for this offense.

Under the law of the State of Oklahoma, every person found guilty of MURDER IN THE FIRST DEGREE shall be punished by death or imprisonment for life.

No. 2

In the sentencing state of this trial, the State has filed a document called a bill of particulars. In this bill of particulars, the State alleges the defendant should be punished by death, because of the following aggravating circumstances:

1. The murder was especially heinous, atrocious, or cruel;
2. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

No. 3

The defendant has entered a plea of not guilty to the allegations of this bill of particulars, which casts on the State the burden of proving the material allegations in this bill of particulars beyond a reasonable doubt.

This bill of particulars simply states the grounds upon which the State seeks imposition of the death penalty. It sets forth in a formal way the aggravating circumstances of which the defendant is accused. It is, in itself, not evidence that any aggravating circumstances exist, and you must not allow yourselves to be influenced against the defendant by reason of the filing of this bill of particulars.

The defendant is presumed to be innocent of the charges made against him in the bill of particulars, and innocent of each and every material element of said charges, and this presumption of innocence continues unless his guilt is established beyond a reasonable doubt. If, upon consideration of all the evidence, facts, and circumstances in the case, you entertain a reasonable doubt of the guilt of the defendant of the charges made against him in the bill of particulars, you must give him the benefit of that doubt and return a sentence of life imprisonment.

No. 4

You are instructed that, in arriving at your determination of punishment, you must first determine whether at the time this crime was committed any one or more of the following aggravating circumstances existed beyond a reasonable doubt:

1. The murder was especially heinous, atrocious, or cruel;

2. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

No. 5

As used in these instructions, the term "heinous" means extremely wicked or shockingly evil; "atrocious" means outrageously wicked and vile; "cruel" means pitiless, or designed to inflict a high degree of pain, utter indifference to, or enjoyment of, the sufferings of others.

The phrase "especially heinous, atrocious, or cruel" is directed to those crimes where the death of the victim was preceded by torture of the victim or serious physical abuse.

No. 6

Aggravating circumstances are those which increase the guilt or enormity of the offense. In determining which sentence you may impose in this case, you may consider only those aggravating circumstances set forth in these instructions.

Should you unanimously find that one or more aggravating circumstances existed beyond a reasonable doubt, you would be authorized to consider imposing a sentence of death.

If you do not unanimously find beyond a reasonable doubt that one or more of the aggravating circumstances existed, you are prohibited from considering the penalty of death. In that event, the sentence must be imprisonment for life.

No. 7

Mitigating circumstances are those which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability or blame. The determination of what are mitigating circumstances is for you as jurors to resolve under the facts and circumstances of this case.

No. 8

Evidence has been offered as to the following mitigating circumstances:

1. The existence of youthfulness of the defendant.

No. 9

If you unanimously find that one or more of the aggravating circumstances existed beyond a reasonable doubt, unless you also unanimously find that any such aggravating circumstance or circumstances outweigh the finding of one or more mitigating circumstances, the death penalty shall not be imposed.

No. 10

If you unanimously find that one or more of the aggravating circumstances existed beyond a reasonable doubt, the law requires that you reduce such findings to writing by stating specifically what aggravating circumstances existed, if any. This finding must be made a part of your verdict.

You must indicate this finding by checking the box next to such aggravating circumstances on the appropriate verdict form furnished you, and such verdict form must be signed by your foreman.

The law does not require you to reduce to writing the mitigating circumstances you find, if any.

No. 11

In arriving at your determination as to what sentence is appropriate under the law, you are authorized to consider only the evidence received here in open court presented by the State and the defendant during the sentencing phase of this proceeding.

All the previous instructions given you in the first part of this trial apply where appropriate and must be considered together with these additional instructions. Together they contain all the law of any kind and the rules you must follow in deciding this case. You must consider them all together and not just a part of them.

You are the determiner of the facts. The importance and worth of the evidence is for you to decide.

I have made rulings during the second part of this trial. In ruling, I have not in any way suggested to you, nor intimated in any way, what you should decide. I do not express any opinion whether or not aggravating circumstances did or did not exist, nor do I suggest to you in any way the punishment to be imposed by you.

You must not use any kind of chance in reaching a verdict, but you must rest it on the belief of each of you who agrees with it.

You have already elected a foreman. In the event you assess the death penalty, your verdict must be unanimous. You may also return a unanimous verdict of imprisonment for life. Proper forms of verdict will be given you which you shall use in expressing your decision. When you have reached a verdict, all of you in a body must return it into open court.

The law provides that you shall now listen to and consider the further arguments of the [illegible]orneys.

Dated this 9th day of December, 1983.

/s/ James R. Winchester
JAMES R. WINCHESTER

SUPPLEMENTAL INSTRUCTION

No. 12

You have asked the question Please define mitigating.

Answer: You have your instructions, please continue deliberation.

/s/ James R. Winchester
JAMES R. WINCHESTER

SUPPLEMENTAL INSTRUCTION

No. 13

You have asked the question If sentenced for life what would be parole eligibility?

ANSWER: That is an executive decision, not judicial. You have your instructions.

/s/ James R. Winchester
JAMES R. WINCHESTER

IN THE DISTRICT COURT OF THE
SIXTH JUDICIAL DISTRICT OF THE
STATE OF OKLAHOMA
SITTING IN AND FOR GRADY COUNTY

(Title Omitted in Printing)

Filed December 9, 1983

**[JURY VERDICT RE
AGGRAVATING CIRCUMSTANCES]**

We, the jury, impaneled and sworn in the above entitled cause, do upon our oaths unanimously find the following statutory aggravating circumstance or circumstances as shown by the circumstance or circumstances checked:

✓ The murder was especially heinous, atrocious, or cruel;

The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

/s/ Floyd E. Marshall
Foreman

IN THE DISTRICT COURT OF THE
SIXTH JUDICIAL DISTRICT OF THE
STATE OF OKLAHOMA
SITTING IN AND FOR GRADY COUNTY

(Title Omitted in Printing)

Filed December 9, 1983

[JURY VERDICT FIXING PUNISHMENT AT DEATH]

We, the jury, impaneled and sworn in the above entitled cause, do upon our oaths, having heretofore found the defendant WAYNE THOMPSON, guilty of Murder in the First Degree, fix his punishment at death.

/s/ Floyd E. Marshall
Foreman

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

No. J-83-362

IN THE MATTER OF W.W.T., A CHILD
UNDER THE AGE OF EIGHTEEN YEARS,
Appellant,

-vs-

THE STATE OF OKLAHOMA,
Appellee.

Filed January 13, 1984

ORDER AFFIRMING CERTIFICATION TO STAND TRIAL AS AN ADULT

W.W.T. was charged on the 22nd day of February, 1983, for Murder in the First Degree, in the District Court of Grady County. A finding of prosecutive merit was had on the 29th day of March, 1983. On April 21, 1983, the amenability to prosecution hearing was held, which resulted in an order certifying W.W.T. to stand trial as an adult.

A petition for rehearing was filed with this Court on the 20th day of June, 1983. It contained the following two specifications of error:

a. Error of the Court in overruling Appellant's demurrer to the evidence.

b. Error of the Court in refusing to grant a continuance.

Only the transcript of the hearing on prosecutive merit was filed in this case. No briefs have been filed in support of the contentions, as required by 22 O.S.1981, ch. 18, App. Rule 7.5(c). We shall therefore only consider the allegations upon the face of the record before us.

We are first convinced that the demurrer to the evidence was properly overruled. The transcript reveals that, on the 18th day of February, 1983, the body of one Charles Keene was found lying at the bottom of the Washita River in Grady County. The body had two gunshot wounds; the throat and chest were both cut; and it was weighted down with concrete blocks and log chains. Witness testimony established that, beginning on the 22nd day of January, 1983, the appellant admitted to several persons that he was responsible for the killing. There was also testimony that the appellants boots had hair stuck in the soles on or about the 22nd day of January. We are convinced the State sufficiently established the prosecutive merit of the case.

The record does not support the appellant's second allegation of error that a continuance was denied. Accordingly, it is dismissed.

The certification to stand trial as an adult is therefore AFFIRMED.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 11th day of January, 1984.

/s/ Hez J. Bussey
HEZ J. BUSSEY
Presiding Judge

/s/ Tom R. Cornish
TOM R. CORNISH
Judge

/s/ Tom Brett
TOM BRETT
Judge

ATTEST:

/s/ [Illegible]
Clerk

IN THE DISTRICT COURT OF GRADY COUNTY,
STATE OF OKLAHOMA

No. CRF-83-45

STATE OF OKLAHOMA,
Plaintiff,

vs.

WAYNE THOMPSON,
Defendant.

JUDGMENT AND SENTENCE ON CONVICTION

Now on this 6th day of January, 1984, the same being a juridicial day of said Court, and the time duly appointed for judgment, and the Defendant WAYNE THOMPSON being personally present in the Court by his attorney of record, ED McCONNELL, and having been legally charged with the offense of MURDER FIRST DEGREE and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense after having been duly advised of his rights; and having been duly and legally tried and convicted of the crime of MURDER FIRST DEGREE and the Defendant, having been asked by the Court whether he has any legal cause to show why judgment and sentence should not be pronounced against him and he stating no sufficient cause why judgment and sentence should not be pronounced against the defendant, and none appearing to the Court, it is the judgment of the Court that said defendant is guilty of the crime of MURDER FIRST DEGREE.

IT IS THEREFORE ORDERED AND ADJUDGED BY THE COURT that the said WAYNE THOMPSON be committed to the custody of the STATE DEPARTMENT OF CORRECTIONS for ADMINISTRATION OF DEATH BY INJECTION, to be transported by the Sheriff of Grady County to the LEXINGTON ASSESSMENT AND RECEPTION CENTER at Lexington, Oklahoma, for commitment as reflected by this Judgment and Sentence at a facility designated by the STATE DEPARTMENT OF CORRECTIONS.

The Court further advised the defendant of his right to appeal the Court of Criminal Appeals of the State of Oklahoma, of the necessary steps to be taken by him to perfect such appeal, and that if he desired to appeal and was unable to afford counsel and a transcript of the proceedings, that the same would be furnished by the State without cost to him.

IT IS FURTHER ORDERED that the Sheriff of Grady County transport said defendant to the LEXINGTON ASSESSMENT AND RECEPTION CENTER at Lexington, Oklahoma, and leave therewith a copy of this Judgment and Sentence to serve as warrant and authority for the imprisonment of said defendant as provided herein. A second copy of this judgment and sentence to be warrant and authority of said Sheriff for the transportation and imprisonment of said defendant as hereinbefore provided. The Sheriff to make due return to the Clerk of this Court with the proceedings endorsed thereon.

/s/ James R. Winchester
Judge

ATTEST:

GLENDA FENIMORE
Court Clerk

By: /s/ Sharon O'Neal
Deputy

SEAL:

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

No. F-84-29

WILLIAM WAYNE THOMPSON,
Appellant,

—vs—

STATE OF OKLAHOMA,
Appellee.

August 29, 1986

OPINION

BRETT, Judge:

Having been certified to stand trial as an adult, William Wayne Thompson was tried for First Degree Murder [21 O.S.1981, § 701.~~7~~(A)] in Grady County District Court, Case No. CRF-83-45. The jury found him guilty as charged and fixed his punishment at death. Judgment and sentence were rendered accordingly and appellant appeals. We affirm.

The evidence at trial showed that appellant, his brother Anthony James Mann, Bobby Glass, and Richard Jones murdered Charles Keene, the appellant's former brother-in-law, in the early morning hours of January 23, 1983. Keene was shot once in the head and once in the chest, and his throat, chest, and abdomen had been cut. He also had multiple bruises and abrasions, especially about his face and head, and his left leg was broken. Keene's body was chained to a concrete block and thrown into the

Washita River, where it remained undiscovered until February 18, 1983. The four co-defendants were tried separately. Each received the death penalty.

Appellant raises three assignments of error that pertain to the guilt stage of the trial. He first argues that the prosecutor "set the stage for a long line of requests for sympathy for the victim during voir dire." As trial counsel failed to object to any of these statements or questions, the alleged error has not been properly preserved for review. *See Nucklos* v. *State*, 690 P.2d 463 (Okl. Cr. 1984). We conclude from our examination of the record that there was no fundamental error.

Appellant relies on *Grigsby* v. *Mabry*, 569 F. Supp. 1273 (E.D. Ark. 1983) for the proposition that excluding potential jurors simply because they are opposed to capital punishment denies the accused of a trial by a fair and impartial cross-section of the community. Since this appeal was filed, the *Grigsby* case has been affirmed by the circuit court, 758 F.2d 226 (8th Cir. 1985), but reversed by the Supreme Court *sub nom. Lockhart* v. *McCree*, —— U.S. ——, 106 S.Ct. 1758, —— L.Ed.2d —— (1986). The United States Supreme Court rejected this proposition as did this Court in *Foster* v. *State*, 714 P.2d 1031 (Okl. Cr. 1986). Moreover, this argument was not raised at trial and cannot, therefore, be raised on appeal. *See Nuckols*, 690 P.2d at 469.

Appellant's final assignment of error that would affect the conviction is that the trial court committed reversible error by admitting into evidence a video tape depicting the recovery of the victim's body from the river and three color photographs of the victim. Trial counsel objected to the exhibits on the basis that all were gruesome and more prejudicial than useful, that they only emphasized and re-emphasized matters that were covered less graphically by the medical examiner. The trial court found that the probative value of the photographs and video tape outweighed their prejudicial effect and that

they were relevant to show the condition and location of the body at the time it was recovered.

We have viewed the video tape and did not find it to be gruesome. No close-up views of the body were shown to the jury. Admitting the tape into evidence was not error. Nor was it error to admit the photograph of the victim showing the chain wrapped around his legs and a concrete block as that picture was not particularly gruesome.

The other two color photographs, however, were gruesome. Admitting them into evidence served no purpose other than to inflame the jury. We do not understand why an experienced prosecutor would risk reversal of the whole case by introducing such ghastly, color photographs with so little probative value. We fail to see how they could possibly assist the jury in the determination of defendant's guilt. The trial court's admission of these two photographs was error. *See Oxendine* v. *State*, 335 P.2d 940 (Okl. Cr. 1958).

Nevertheless, the evidence against the appellant was so strong that the error does not require reversal. *See Newbury* v. *State*, 695 P.2d 531 (Okl. Cr. 1985). Two witnesses—Donetta Bradford, appellant's girlfriend, and Charlesetta Garcia, Bobby Glass' girlfriend—testified that appellant told them that he had shot Charles in the head and cut his throat. Charlotte Mann, Anthony Mann's former wife, heard appellant tell his mother that Charles Keene was dead, that he had killed him, and that Vicki —the victim's ex-wife and the appellant's sister—did not have to worry about him anymore.

When appellant and the other co-defendants left their house on the evening of the murder, appellant told Bradford, "We're going to kill Charles." When they returned several hours later, appellant was wet from the chest down, his nose was bleeding, and he no longer had on the cap he had been wearing when he left.

Myrtle and Malcolm "Possum" Brown, who lived near the Washita River, returned from a vacation and retired

early the night Charles Keene was killed. They were awakened by a gunshot and barking dogs. A man pounded on the door and shouted, "Possum, let me in. They're going to kill me." The Browns looked outside and saw three or four men beating another man. They heard one of the men say, "This is for the way you treated our sister." Mr. Brown telephoned the sheriff, but the men left soon after they realized the Browns were home and witnessing the fray. It was too dark for the Browns to identify any of the men.

The O.S.B.I. analyzed a stain on the Browns' front porch carpet and discovered it was caused by human blood group A, the same blood type of the victim. An expended .45 caliber Winchester Western cartridge case was found in the Browns' front yard; the same type of ammunition was used to kill Charles Keene. In the Browns' dogpen, fabric was found that had the same type design as the cap appellant had worn the night of the homicide.

The above recitation of facts is by no means exhaustive, but is demonstrative of how strong the evidence against appellant was. In view of this evidence, we cannot say that the two color photographs, although gruesome, affected the jury's determination that appellant was guilty as charged.

Finding no errors which would affect the conviction of first degree murder, we affirm that judgment. We turn now to a review of the sentencing.

Appellant alleges four catagories of prosecutorial misconduct: comments requesting sympathy for the victim, comments arousing societal alarm, injecting matters not in evidence through improper cross-examination, and unfair characterization of the appellant. None of the statements falling in the first category were preserved for review as trial counsel made no objection. Having reviewed the record for fundamental error, we conclude that none of the comments warrant reversal or modification. *See Nuckols*, 690 P.2d at 471.

The comments that appellant claims were designed to arouse societal alarm were in fact, as the trial judge ruled them to be, comments on the appellant's propensity to commit acts of violence in the future. As that was one of the aggravating circumstances alleged and supported by evidence, we find the comments to be a fair comment on the evidence and within the permissible range of closing argument.

The alleged improper cross-examination was of character witnesses called by the defense. Most of the questions were proper under 12 O.S.1981, § 2405, which states that "[i]nquiry is allowable on cross-examination into relevant specific instances of conduct."

One question, however, was clearly improper. The prosecutor asked one defense witness whether he was related to Cecil Leroy Cloud. When the witness responded that Mr. Cloud was his father's step-brother, the prosecutor said, "That's the same Cecil Leroy Cloud that we sent to the pen for shooting with intent to kill, correct." We agree with appellate counsel that "[i]njection of the criminal record of a distant relative of a witness has no place in a criminal proceeding, and could not be termed anything other than an intentional effort at hurting the case of the accused." Notwithstanding, no objection was made at trial and we believe that such an obviously "cheap shot" discredited the prosecutor more than the witness. The error was not prejudicial and does not warrant modification of the sentence.

Appellant further complains that the prosecutor consistently sought to characterize him as being emotionally older than his chronological age. Defense counsel stressed appellant's youth as a mitigating factor, arguing that he should not be given the death penalty because he was young enough to change and improve himself. Defense counsel also tried to argue that appellant was a "normal little boy . . . just like other little boys." The prosecutor's arguments to the contrary were proper inferences from the evidence. The evidence did not show William Wayne

Thompson to be a typical sixteen-year-old, and the State properly argued that fact.

The appellant's next proposition is that the execution of William Wayne Thompson, who was fifteen at the time of the offense, would constitute cruel and/or unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution and under Article Two, Section Nine of the Oklahoma Constitution. The same arguments now made by appellant were made by appellate counsel in *Eddings* v. *State*, 616 P.2d 1159 (Okl. Cr. 1980). This Court, unanimously rejecting the arguments, found that imposition of the death penalty on a minor certified to stand trial as an adult constitutes neither cruel nor unusual punishment. *Id.* at 1166-67.

The United States Supreme Court granted certiorari on the issue, *Eddings* v. *Oklahoma*, 450 U.S. 1040, 101 S.Ct. 1756, 68 L.Ed.2d 237 (1981), but then decided the case on another ground. *Eddings* v. *Oklahoma*, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982). Upon reconsideration of the issue, we reaffirm our previous holding that once a minor is certified to stand trial as an adult, he may also, without violating the Constitution, be punished as an adult.

Next appellant argues that failure of the prosecutor to present evidence of specific aggravating circumstances at the preliminary hearing deprived the trial court of jurisdiction to sentence him to death. This Court has repeatedly rejected this argument. *See, e.g., Nuckols*, 690 P.2d at 469-70; *Brewer* v. *State*, 650 P.2d 54 (Okl.Cr.1983). As a subproposition of error the appellant claims that the State failed to inform him of the evidence in aggravation it intended to present. The record, however, indicates that notice was given three months before trial. This assignment of error is totally without merit.

In the next assignment of error, appellant urges this Court to overrule the portion of *Chaney* v. *State*, 612 P.2d 269 (Okl.Cr.1980), *rev'd in part on other grounds sub nom. Chaney* v. *Brown*, 730 P.2d 1334 (10th Cir.

1984), that held that the instructions given provided the jury sufficient guidance to prevent an arbitrary or discriminatory application of the death penalty. *See id.* at 279-80. Substantially the same instructions were given in the case at bar, and we find them to be adequate for constitutional purposes. Furthermore, the instructions were not objected to at trial.

Appellant argues next that examination of one of its witnesses—the seven-year-old son of the victim—was improperly restricted by the court. The record does not bear out this allegation. The transcript of the proceedings conducted in chambers shows exactly what questions defense counsel wanted to ask. The trial court did instruct trial counsel not to ask other types of questions, but defense counsel neither indicated that he wished to do so nor objected to the limitation.

That the trial court erred in failing to instruct the jury, sua sponte, that he would impose a life sentence if they could not reach a verdict within a reasonable time is appellant's next contention. This Court has held that it is not even error to refuse to give such an instruction if it is requested. *Brogie* v. *State*, 695 P.2d 538 (Okl.Cr. 1985). The trial court did not err.

The appellant argues that the Eighth and Fourteenth Amendments to the United States Constitution do not permit the imposition of the death penalty because this Court has been evaluating the heinous-atrocious-cruel aggravating circumstance in an arbitrary manner. The death penalty convictions affirmed by this Court in which this aggravating circumstance has been found to exist have consistently passed constitutional challenge. *See Cooks* v. *State*, 699 P.2d 653 (Okl.Cr.), *cert. denied*, —— U.S. ——, 106 S.Ct. 268, 88 L.Ed.2d 275 (1985); *Cartwright* v. *State*, 695 P.2d 548 (Okl.Cr.), *cert. denied*, —— U.S. ——, 105 S.Ct. 3538, 87 L.Ed.2d 661 (1985); *Stout* v. *State*, 693 P.2d 617 (Okl.Cr.1984), *cert. denied*, —— U.S. ——, 105 S.Ct. 3489, 87 L.Ed.2d 623 (1985); *Nuckols* v. *State*, 690 P.2d 463 (Okl.Cr.1984), *cert. denied*,

—— U.S. ——, 105 S.Ct. 2050, 85 L.Ed.2d 323 (1985); *Robison* v. *State*, 677 P.2d 1080 (Okl.Cr.), *cert. denied*, 467 U.S. 1246, 104 S.Ct. 3524, 82 L.Ed.2d 831 (1984); *Davis* v. *State*, 665 P.2d 1186 (Okl.Cr.), *cert. denied*, 464 U.S. 865, 104 S.Ct. 203, 78 L.Ed.2d 177 (1983); *Jones* v. *State*, 648 P.2d 1251 (Okl.Cr.1982), *cert. denied*, 459 U.S. 1155, 103 S.Ct. 799, 74 L.Ed.2d 1002 (1983). Furthermore, the manner in which the murder was accomplished in this case was obviously heinous, atrocious or cruel. Before dying, the victim was severely beaten, had his leg broken, his throat and chest slashed, and knew for some time that his attackers ultimately were going to kill him.

Dr. Helen Kline, a clinical psychologist and director of the psychology department at Central State Hospital testified at the sentencing stage of the trial. Her testimony was used solely to prove the existence of a probability that the appellant would commit criminal acts of violence that would constitute a continuing threat to society.

Appellant argues that his Fifth and Sixth Amendment rights were violated because he was not warned of his right to remain silent during the two interviews with Dr. Kline, or that anything he said could be used against him. The original record was silent in this regard until appellant filed an affidavit dated November 21, 1985, stating he was not so warned. The State filed an affidavit dated April 1, 1986, saying she did warn him.

The United States Supreme Court has held that a criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding. When a defendant is faced while in custody with a court-ordered psychiatric inquiry, the State may use his statements at the penalty phase only if the defendant was apprised of his rights and knowingly decided to waive them. *Estelle* v. *Smith*, 451 U.S.

454, 468-69, 101 S.Ct. 1866, 1876, 68 L.Ed.2d 359 (1981).

Appellant claims that his failure to object when Dr. Kline testified does not constitute waiver of this claim because the Supreme Court did not require a timely, specific trial objection in *Smith*. The Supreme Court, however, gave its reasons for rejecting the State's waiver argument,[1] and none of those reasons are applicable to the case at bar. Thus, we conclude that regardless of whether appellant was warned, he has forfeited this argument by failing to assert the claim at a time when the trial judge could have prevented any error.

Finally, appellant, relying on *Ake* v. *Oklahoma*, —— U.S. ——, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985), argues that because the State utilized psychiatric testimony, it was error not to afford appellant a psychiatric witness to counter the State's evidence. Appellant does not allege that funds for a psychiatric witness were requested.

Even if a psychiatric witness was required by *Ake*, the *Ake* Court's reason for its ruling was to prevent the State from having a strategic advantage over a defendant that would create a risk of error in the proceeding absent a defense witness to counter-balance the State's expert testimony. In the case at bar, any advantage the State may have had was fruitless since the jury did not find the existence of the aggravating circumstance that the State intended to prove by Dr. Kline's testimony. Error, if any, was harmless and not cause for modification or reversal. *See* 20 O.S. 1981, § 3001.1.

Having addressed all the errors alleged by the appellant, this Court now turns to a determination of whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor and

[1] The Supreme Court agreed with the Court of Appeals' reasons, to wit: that the State did not timely raise this argument; that objecting would have been a futile act under Texas law; and that defendant Smith's objection was essentially surprise. *Smith*, 451 U.S. at 468, n.12.

whether the evidence supports the jury's finding that the murder was especially heinous, atrocious, or cruel. 21 O.S.Supp.1985, § 701.13.

The victim herein was abducted from his home, severely beaten by four men, shot twice, and had his leg broken and his throat and chest slashed with a knife. When he attempted to escape and had a chance to call out for help, he was thrown into the trunk of a car. These facts amply support the conclusion that the murder was heinous, atrocious, or cruel.

The record discloses nothing to indicate that the death sentence was imposed under the influence of passion, prejudice, or any other arbitrary factor. Although appellant was the youngest of the four assailants, his participation was hardly minimal. The evidence showed that he personally kicked the victim in the head, shot the victim in the head, slit the victim's throat, and dragged the victim's weighted body into the river. The jury's decision clearly was based on the overwhelming evidence of appellant's culpability for this truly heinous crime.

The judgment and sentence are hereby AFFIRMED.

AN APPEAL FROM THE DISTRICT COURT OF
GRADY COUNTY, OKLAHOMA
THE HONORABLE JAMES R. WINCHESTER,
DISTRICT JUDGE

WILLIAM WAYNE THOMPSON, appellant, was convicted of First Degree Murder, in the District Court of Grady County, Case No. CRF-83-45, was sentenced to death, and he appeals. AFFIRMED.

E. ALVIN SCHAY
Appellate Public Defender
Norman, Oklahoma
Attorney for Appellant

MICHAEL C. TURPEN
Attorney General of Oklahoma
WILLIAM H. LUKER
Assistant Attorney General
Oklahoma City, Oklahoma
Attorneys for Appellee

Opinion by

BRETT, J., PARKS, P.J., Specially Concurs

BUSSEY, J., Specially Concurs

BUSSEY, Judge: Specially Concurring

Finding no error warranting reversal or modification, I agree that the judgment and sentence should be affirmed.

PARKS, P.J., Specially Concurring:

I agree with all that my brother Judge Brett has stated in this opinion. However, I write separately to consider whether the sentence of death in this case "is excessive or disproportionate . . ., considering both the crime and defendant." This consideration is missing from the Court's opinion. 87 O.S.1981, § 701.13(C).

Although our Legislature has revised this statute somewhat in 1985 Okla. Sess. Laws, Ch. 265, now codified at 21 O.S. Supp. 1985, § 201.13, I believe application of this revision to cases pending on appeal at the time the law was enacted would render the new provision an *ex post facto* law. *See Green v. State*, 713 P.2d 1032, 1041 n. 4 (Okl.Cr. 1985). Nevertheless, I have personally compared the sentence imposed herein with those previous cases either affirmed [1] or modified [2] by this Court, and find the sentence to be proper.

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[1] *Ross v. State*, —— P.2d —— (Okl.Cr. 1986) *Foster v. State*, —— P.2d —— (Okl.Cr. 1986) *Green v. State*, 713 P.2d 1032 Okl. Cr. 1986) *Liles v. State*, 702 P.2d 1025 (Okl.Cr. 1985); *Cooks v. State*, 699 P.2d 653 (Okl.Cr. 1985); *Banks v. State*, 201 P.2d 418 (Okl.Cr. 1985); *Cartwright v. State*, 695 P.2d 548 (Okl.Cr. 1985); *Brogie v. State*, 695 P.2d 538 (Okl.Cr. 1985); *Bowen v. State*, —— P.2d ——, 55 O.B.J. 2520 (Okl.Cr. 1985); *Stout v. v. State*, 693 P.2d 617 (Okl.Cr. 1984); and *Nuckols v. State*, 690 P.2d 463 (Okl.Cr. 1984); *Robinson v. State*, 677 P.2d 1080 (Okl.Cr. 1984); *Dutton v. State*, 674 P.2d 1134 (Okl.Cr. 1984); *Stafford v. State*, 669 P.2d 285 (Okl.Cr. 1983); *Coleman v. State*, 668 P.2d 1126 (Okl.Cr. 1983); *Stafford v. State*, 665 P.2d 1205 (Okl.Cr. 1983); *Davis v. State*, 665 P.2d 1186 (Okl.Cr. 1983); *Ake v. State*, 663 P.2d 1 (Okl.Cr. 1983); *Parks v. State*, 651 P.2d 686 (Okl.Cr. 1982); *Jones v. State*, 648 P.2d 1251 (Okl.Cr. 1982); *Hays v. State*, 617 P.2d 223 (Okl.Cr. 1980); and *Chaney v. State*, 612 P.2d 269 (Okl.Cr. 1980), *modified* on other grounds, *sub nom., Chaney v. Brown*, 730 F.2d 1334 (10th Cir. 1984).

[2] *Parker v. State*, 713, P.2d 1032 (Okl.Cr. 1985); *Eddings v. State*, 616 P.2d 1159 (Okl.Cr. 1980); as *modified*, 688 P.2d 342 (Okl.Cr. 1984); *Morgan v. State*, No. F-79-487 (Okl.Cr. No. 14, 1983) (Unpublished); *Johnson v. State*, 665 P.2d 815 (Okl.Cr. 1982); *Glidewell v. State*, 663 P.2d 738 (Okl.Cr. 1983); *Jones v. State*, 660 P.2d 634 (Okl.Cr. 1983); *Driskell v. State*, 659 P.2d 343 (Okl.Cr. 1983); *Boutwell v. State*, 659 P.2d 322 (Okl.Cr. 1983); *Munn v. State*, 658 P.2d 482 (Okl.Cr. 1983); *Odum v. State*, 651 P.2d 703 (Okl.Cr. 1982); *Burrows v. State*, 640 P.2d 533 (Okl.Cr. 1982); *Franks v. State*, 636 P.2d 361 (Okl.Cr. 1981); *Irvin v. State*, 617 P.2d 588 (Okl.Cr. 1980).

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

(Title Omitted in Printing)

ORDER DENYING PETITION FOR REHEARING

On September 18, 1986, the above petitioner filed his petition for rehearing in the above numbered appeal. Petitioner was convicted in the District Court of Grady County, Case No. CRF-83-45, of Murder in the First Degree and was sentenced to death. This Court rendered its opinion on August 29, 1986, affirming the conviction.

NOW THEREFORE, after considering the petition for rehearing and after reviewing the decision of this Court and being fully advised in the premises, this Court finds that the petition for rehearing should be denied.

IT IS THEREFORE THE ORDER OF THIS COURT, that the petition for rehearing shall be DENIED. The Clerk is directed to issue the mandate FORTHWITH.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 24th day of September, 1986.

/s/ Ed Parks
ED PARKS
Presiding Judge

/s/ Tom Brett
TOM BRETT
Judge

/s/ Mez Bussey
MEZ BUSSEY
Judge

ATTEST:

/s/ James Patterson
(Clerk)

SUPREME COURT OF THE UNITED STATES

No. 86-6169

WILLIAM WAYNE THOMPSON,
Petitioner

v.

OKLAHOMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE COURT OF THE STATE OF OKLAHOMA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

February 23, 1987